Supreme Court of the United States

OCTOBER TERM, 1961

No. 158

WILLARD CARNLEY, PETITIONER

vs.

H. G. COCHRAN, JR., DIRECTOR OF THE DIVISION OF CORRECTIONS, FLORIDA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

INDEX

[fol. 1]

IN THE SUPREME COURT OF FLORIDA
TALLAHASSEE

WILLARD CARNLEY, PEARL CARNLEY, PETITIONERS

vs.

H. G. COCHRAN, JR., Director, Division of Corrections, Tallahassee, Florida, RESPONDENT

PETITION FOR WRIT OF HABEAS CORPUS AD SUBJICIENDUM

Comes now the petitioners herein, WILLARD CARNLEY and PEARL CARNLEY, in their own and proper persons, without counsel and presents to this Honorable Court that:

I

They are presently illegally restrained of their lawful liberty in definance of the Declaration of Rights of Florida, Chapters I, II, and also secured to them by the "equal protection" and "due process" clauses of the 14th Amendment to the U. S. Constitution.

II

The petitioners were arrested November 5, 1957 and held until September 8; 1958 when they waived jury trial, and were tried and sentenced before a jury of six, September 19, 1958, to serve Six Months to Twenty Years in Prison, predicated on an information filed August 11, 1958, a certified true copy of which is affixed hereto and made a part hereof.

III

Petitioner Willard Carnley is *completely without education* and cannot recount the A.B.C.'s. Petitioner Pearl Carnley possesses a minimal sixth grade education. Neither possesses the most elimentary rudiments of criminal procedure or foreknowledge with which to conduct a defense.

[fol. 2] Petitioners have no knowledge of any warrant or capias, neither were they presented with same nor was such a paper served or read to them at any time, the petitioner Willard Carnley being held in solitary confinement for a period of five (5) months. Neither were they advised of their right to arraignment without unnecessary delay, pursuant to the requirements of Chapter 901.06 and 901.23 F.S.A.

IV

Being held without a charge filed against them from November 5, 1957 to August 11, 1958, violated the Speedy Trial provision of Chapter II, also the remedy of due course of law Chapter IV, Bill of Rights. Owing to their inexperience they were deprived of their right to defend life and liberty as assured them in Chapter I.

V

Your petitioners requested a lie detector test in Court on September 19, 1958.

Petitioners requested defense counsel and protested their innocence and inability to conduct a defense, which same inability was outstandingly manifest at the farce of a trial when both petitioners tried to question the prosecutrix as to who conceived the idea of the criminal prosecution against them whereupon the Court peremptorily ordered their victims to sit down.

VI

The prosecution charged that inception occurred during the alleged incest. Still, no medical doctor was called to testify; the petitioner asked for blood tests to prove medically the parentage of the alleged child, the Court denied this right to prove innocence. The prosecution waited until the alleged child was born to allege the crime to fix the date of the alleged crime to correspond with the pregnancy period. In other words, petitioners were [fol. 3] jailed and held from November 5th, 1957, until August 11th, 1958, so the prosecution could find something to charge their victims with.

VII

In Wood V. State, 19 So. 2d—P.972-876; this Court declared that a fair and impartial trial contemplated "counsel" compulsory attendance of witnesses and time in which to prepare for trial, and committed the Court to this doctrine, with the observation that *any steps short* of these several requirements defeat the spirit of the law; all people as far as the law is concerned "must" stand on an equality before the bar of justice in every American Court; Chambers V. Florida 309 U.S. 227, 241. The fundamental requisite of "Due process of law" is notice and opportunity for a full and complete hearing; Carrigg V. Anderson, 9ALR 2d, 545, 167. Kan. 238, 205 P 2d, 1004; State V. Sax, 18 ALR 2d 929 Minn. 42 NW 2d 680: It cannot be assumed that petitioners were given a "hearing" within the requirements of justice when they could not prepare a defense and were incompetent to conduct one single essential of a legal defense.

Courts of competent jurisdiction have held without exception that a Court is devoid of jurisdiction when the demand for counsel is denied the poor. See: Re: Barry, 136 U.S. 597603; Frank V. Mangum 237 U.S. 303, 327; Commonwealth V. Gresham 244 SW (KY) 66; Storti V. Massachusetts, 183 U.S. 138, 143, 22, Sec. 72, 46 L.Ed. 120; Hack V. State, 141 Wisc., 346; quoted in Zellers V. State, 189 So. 236, 138 Fla. 158; Sneed V. Mayo 66 So. 2d 865. The Supreme Court in Powell V. Alabama 287 U.S. 45, and ex parto Riggins (CC) 134 Fed. 404, 418, established a standard of justice intended to be all pervasive. See "1 Cooley Const. Lim 8th Ed. 7C; E. G. People V. Napthaly 105 Cal. 641, 644, 39 Pac. 29; Cutts V. State of Florida, 54 Fla. 21, 23, 45, So. 491: Martin V. State, 51 Ga. 567, 568, 1 Am. Crim. Rep. 563; Sheppard V. State 165 Ga. 460, 464, 141 S. E. 196; State V. Moore, 61, Kan. 732, 734, 60 Pac., 748: State V. Ferris, 16 La. Am., 424. The "due process of law" clause of [fol. 4] the 14th amendment is mandatory in design and is therefore enforceable prescribing a criterion of ordered liberty without which a Court is utterly devoid of jurisdiction; See, Chambers V. Florida supra, Francis V. Rosweber 329 U.S. 459; Pallo V. Comm. 301 U.S. 319;

Gibbs V. Burke 337 U.S. 773; Commonwealth V. Gresham 244 S.W. (KY) 661 Kennard V. Louisiana, 92 U.S. 480. When it is shown that the defendant is incapable of defending himself, the Courts *must appoint* counsel for indigent defendants. Zellars V. State, as cited supra.

VIII

Certainly the details heretofore related cannot be Florida's concept of equal justice for all. See, Barbier V. Connelly, 113 U.S. 27 (1885); Yick Wo V. Hopkins; Griffin V. Illinois 351 U.S. 12; Levitious C.19 V.15; Harvey V. Elliott, 167 U.S. 409; Lane V. Wilson, 307 U.S. 268; Cole V. Arkansas 333, U.S. 196, 201; Dowd V. U.S. ex rel, Cook, 340 U.S. 206, 208; Cochran V. Kansas, 316, U.S. 255, 257; Frank V. Mangum, supra. It is essentially conductive to lawn self respect to recognize candidly the considerations that give prospective content to the law as embodied in these citations consonant with the spirit of our law. It is not to be thought of in a civilized community, for a moment, that any citizen put in jeopardy of life or liberty should be debarred of counsel because he was too poor to employ such aid, "*no court could be respected or respect itself to sit and hear such a trial*".; Webb V. Baird, 6 Ind. 13, 18; Betts V. Brady 316 U.S. 455, 462.

IX

There was no crime on petitioners part, the reprehensible dereliction of the Court alone convicted and illegally and unlawfully imprisoned their indignent victims.

X

The two crimes of fondling, and incest cannot co-exist [fol. 5] as alleged in the affixed information as the act of fondling as described in the purview of the Florida Statute is a prerequisite to and a distinct unit of the act of incest, in this respect the act of accessory before the fact is an invalid fallacy.

Prayer

The petitioners therefore pray that this Honorable Court issue the Writ of Habeas Corpus and submit this cause to a Court of Competent jurisdiction with counsel of their choice assigned in their just defense and/or issue an order to the Respondent that they be freed of their unlawful detention instanter and proceed hence without delay.

Respectfully submitted,

/s/ Willard Carnley
Willard Carnley

/s/ Pearl Carnley
Pearl Carnley

[fol. 6] EXHIBIT TO PETITION

"A True Copy"

IN THE COURT OF RECORD IN AND FOR ESCAMBIA COUNTY, FLORIDA

68-614 September 19, 1958

STATE OF FLORIDA

VS.

WILLARD CARNLEY
PEARL CARNLEY

1st. Ct. INCEST (Willard Carnley)
2nd. Ct. FONDLING (Willard Carnley)
3rd. Ct. ACCESSORY BEFORE THE FACT TO INCEST (Pearl Carnley)
4th. Ct. ACCESSORY BEFORE THE FACT TO FONDLING (Pearl Carnley)

Now on this day came in person and without counsel, the defendants Willard Carnley and Pearl Carnley into open court and after being duly arraigned the defendant Willard Carnley entered his plea of not guilty to Incest and Fondling as charged in the first and second counts of the information filed herein against him and the defendant Pearl Carnley entered her plea of not guilty to accessory before the fact to Incest and Accessory Before the Fact to Fondling as charged in the third and fourth counts of the information filed herein against her.

WHEREUPON CAME A JURY of six good and lawful men of Escambria County, Florida, to-wit:

1. James D. Roberts
2. John D. Kittrell
3. Eugene O. Kittrell
4. Paul A. Shelby
5. Ernie Newton
6. R. V. White

who were duly elected, empannelled and sworn to well and truly try this cause. After witnesses were sworn, the taking of testimony was begun and concluded and after hearing all the evidence, argument of counsel and the charge of court, the Jury retired to consider its verdict and thereafter returned into Court the following verdict, to-wit:

"case no. 58-614

STATE OF FLORIDA

vs.

WILLARD CARNLEY
PEARL CARNLEY

[fol. 7] /s/ John D. Kittrell
Foreman"

WHEREFORE, the Jury finding you, Willard Carnley, guilty of Incest and Fondling as charged in the first and second counts of the information herein and the Jury finding you, Pearl Carnley guilty of Accessory before the fact to Incest and Accessory before the fact to fondling as charged in the third and fourth counts of the information herein, the Court adjudges you to be guilty of said offense as charged. On being asked by the Court whether or not they had anything to say why sentence of the law should not be pronounced on them, each say nothing.

It is the judgement and order of the Court that you and each of you, Willard Carnley and Pearl Carnley, for your offenses, be imprisoned by confinement and committed to the custody of the Division of Corrections for a term of six (6) months to twenty years (20), said sentence to begin and run from date of incarceration in the Escambia County Jail.

A True Copy:

ERNIE LEE MAGAHA, CLERK
COURT OF RECORD

By: LEAH WARE
Deputy Clerk

[fol. 8] EXHIBIT TO PETITION

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA

IN THE COURT OF RECORD OF
ESCAMBIA COUNTY, FLORIDA

52,930 At the July Term thereof, 1958

John L. Reese, County Solicitor for the County of Escambia, Prosecuting for the State of Florida, in said County, charges that

WILLARD CARNLEY

On the 10th day of July

in the Year of Our Lord, One Thousand, Nine Hundred and fifty-seven at and in Escambia County, Florida, being then and there the father of Carol Jean Carnley, and within the degree of consanguinity within which marriages are declared by law to be incestuous and void, and then and there knowing the said Carol Jean Carnley to be his daughter, did then and there unlawfully, feloniously and incestuously have sexual intercourse with the said Carol Jean Carnley, against the form of the Statute in such case made and provided, and against the peace and dignity of the State of Florida.

SECOND COUNT: And your informant aforesaid, prosecuting as aforesaid, on his oath aforesaid, further information makes, that WILLARD CARNLEY on the 10th day of July, 1957, at and in Escambia County, Florida, did handle, fondle and make an assault upon Carol Jean Carnley, a female child, then under the age of fourteen years, in a lewd, lascivious and indecent manner, without intent to commit rape upon such child, by then and there placing his hands and private sexual parts upon and against the private sexual parts of said female child, against the form of the Statute in such case made and

provided, and against the peace and dignity of the State of Florida.

THIRD COUNT: And your informant aforesaid, prosecuting as aforesaid, on his oath aforesaid, further information makes, that WILLARD CARNLEY, on the 10th day of July, 1957, at and in Escambria County, Florida, being then and there the father of Carol Jean Carnley, and within the degree of consanguinity within which marriages are declared by law to be incestuous and void, and then and there knowing the said Carol Jean Carnley to be his daughter, did then and there unlawfully, feloniously and incestuously have sexual intercourse with the said Carol Jean Carnley, and PEARL CARNLEY, late of the county of Escambria aforesaid, before the committing of the felony aforesaid, to-wit: On July 10, 1957, with force and arms at and in the county of Escambia aforesaid, did unlawfully and feloniously counsel, hire and otherwise procure the said Willard Carnley to do and commit the said felony in the manner and form aforesaid, against the form of the Statute in such case made and provided, and against the peace and dignity of the State of Florida.

FOURTH COUNT: And your informant aforesaid, prosecuting as aforesaid, on his oath aforesaid, further information makes, that WILLARD CARNLEY, on the 10th day of July, 1957, at and in Escambia County, Florida, did handle, fondle and make an assault upon Carol Jean Carnley, a female child then under the age of fourteen years, in a lewd, lascivious and indecent manner, without intent to commit rape upon such child, by then and there placing his hands and private sexual parts upon and against the private sexual parts of said female child, and PEARL CARNLEY, late of Escambia County aforesaid, before the committing of the felony aforesaid, to-wit: on July 10, 1957, with force and arms at and in the County of Escambia aforesaid, did unlawfully and feloniously counsel, hire and otherwise procure the said Willard Carnley to do and commit the said felony in the manner and form aforesaid against the form of the

State in such case made and provided, and against the peace and dignity of the State of Florida.

/s/ John L. Reese
County Solicitor,
Escambia County, Florida

A True Copy:

ERNIE LEE MAGAHA, CLERK
COURT OF RECORD

By: Leah Ware /s/
Deputy Clerk

[fol. 9] • • • •

[fol. 10] IN THE
SUPREME COURT OF FLORIDA

January Term, A. D. 1960

WILLARD CARNLEY, PEARL CARNLEY, PETITIONERS

VS.

H. G. COCHRAN, JR., Director, Division of Corrections, RESPONDENT

WRIT OF HABEAS CORPUS—June 16, 1960

In the Name and By the Authority of the State of Florida to H. G. Cochran, Jr., Director, Division of Corrections, Greeting:

You are hereby commanded that you have the bodies of Willard Carnley and Pearl Carnley by you illegally detained and imprisoned, as it is said, and that you forthwith before the Justices of the Supreme Court of Florida, produce the said Willard Carnley and Pearl Carnley in the City of Tallahassee, instanter, and that you do and receive what shall then and there be considered and determined concerning the said Willard Carnley and Pearl Carnley and otherwise comply with the orders of this Court and that you then and there have this Writ and make due and proper return thereto.

WITNESS the Honorable Elwyn Thomas, Chief Justice of the Supreme Court of Florida, and the Seal of said Court, at Tallahassee, the Capital, on this the 16th day of June, 1960.

/s/ [signature illegible]
Clerk of the Supreme Court of Florida

[fol. 11] IN THE
SUPREME COURT OF FLORIDA

WILLARD CARNLEY, PEARL CARNLEY, PETITIONERS

VS.

H. G. COCHRAN, JR., Director, Division of Corrections,
RESPONDENT

RESPONDENT'S RETURN TO WRIT OF HABEAS CORPUS

Respondent, for return to the writ of habeas corpus heretofore issued herein, says:

I

He held petitioner Pearl Carnley pursuant to a commitment issued by the Court of Record in and for Escambia County, Florida, on September 19, 1958. A true copy of such commitment is attached hereto as Exhibit "A".

II

He no longer has legal custody of petitioner Pearl Carnley inasmuch as the said petitioner has been placed [fol. 12] on parole and is therefore subject to the supervision of the Florida Parole Commission. Attached hereto as Exhibit "A-1" is a certified copy of the certificate of parole of said petitioner.

This petitioner, although a parolee, and, as such, not physically confined in prison in the custody of this respondent, is so restrained of her freedom that she can maintain a habeas corpus proceeding in an effort to secure her discharge from the supervision of the Florida Parole Commission. *Sellers* vs. *Bridges*, 153 Fla. 586, 15 So. 2d 293. Therefore, the Florida Parole Commission joins in this return insofar as the same pertains to the petitioner, Pearl Carnley.

III

He holds petitioner Willard Carnley pursuant to a commitment issued by the Court of Record in and for

Escambia County, Florida, on September 19, 1958. Attached hereto as Exhibit "B" is a true copy of such commitment.

IV.

The aforesaid commitments are predicated upon a judgment and sentence entered by the Court of Record [fol. 13] in and for Escambia County, Florida, on September 19, 1958. Attached hereto as Exhibit "C" is a true copy of such judgment and sentence.

V

The entry of the aforementioned judgment and sentence was occasioned by the petitioners being found guilty by a jury of the crimes with which they were charged in the information filed against them. Attached hereto as Exhibit "D" is a true copy of said information.

VI

Following the filing of the aforesaid information on August 11, 1958, the clerk of the Court of Record in and for Escambia County, Florida, issued a capias for Pearl Carnley on August 15, 1958, and a capias for Willard Carnley on August 15, 1958. The sheriff's return endorsed on the backs of the aforesaid capiases indicated that the same were executed by placing the petitioners in the County Jail of Escambia County, Florida, on August 18, 1958. Attached hereto as Exhibit "E" and "F" are true copies of such capiases.

[fol. 14]

VII

The petitioners were originally arrested on November 5, 1957, pursuant to warrants issued by the County Judge's Court for Escambia County, Florida, and were held pursuant to such warrants for action by the grand jury. Attached hereto as Exhibit "I" is a true copy of the said warrants.

VIII

The aforesaid warrants were predicated upon affidavits charging that the petitioner Willard Carnley had com-

mitted the crimes of rape and fondling and that the petitioner Pearl Carnley was a principal in the first degree. Attached hereto as Exhibits "G" and "H" are true copies of such affidavits.

IX

On August 8, 1958, the grand jury returned an indictment charging the petitioner Willard Carnley with the crime of incest and the petitioner Pearl Carnley as a principal in the first degree. Attached hereto as Exhibit "J" is a true copy of such indictment.

[fol. 15]

X

Following the return of such indictment, the information attached hereto as Exhibit "D" was filed and appropriate proceedings were thereby instituted in the Court of Record in and for Escambia County, Florida.

XI

He admits that petitioners waived jury trial. See Exhibit "D". However, the trial court is not required to dispense with a jury where it is waived by a defendant and, notwithstanding such a waiver, the trial court may disregard it and require that the evidence be submitted to a jury as was done in the instant case. *Jones vs. State*, 155 Fla. 558, 20 So. 2d 901.

XII

He denies that petitioners were totally unable to defend themselves in the trial.

He denies that petitioners requested defense counsel.

He denies that the trial court pre-emptorily ordered the petitioners to sit down when they attempted to inter-

[fol. 16] rogate the witness against them.

He denies that petitioners requested a lie detector test.

He denies that petitioners requested that blood tests of the baby born to the prosecuting witness be taken to prove the parentage of such child.

He affirmatively alleges that petitioners actively participated in the conduct of the trial with both interrogat-

ing witnesses against them, both making opening statements to the jury and with both making closing arguments to the jury.

He further alleges that the petitioners were carefully instructed by the trial court with regard to the rights guaranteed by both the *Constitution of Florida* and the *Constitution of the United States* and with regard to the procedures to be followed during the course of the trial.

In support of all of the above, respondent attaches hereto as Exhibit "K" a certified copy of the transcript of the testimony taken at the trial of which petitioners now complain.

[fol. 17]

XIII

Petitioners' complaints that their case was not considered as speedily by the grand jury as they would now wish is highly immaterial at this juncture inasmuch as the grand jury did act and the petitioners, therefore, received that to which they were entitled, viz: consideration by the grand jury.

XIV

Petitioners also contend that the crime of fondling and the crime of incest constituted but one crime. In this connection, it should be noted that while found guilty of all counts of the information filed against them, petitioners were sentenced to imprisonment in the Florida State Prison for a term of six months to twenty years and by the terms of such sentence, given credit for the time which they had spent in the Escambia County Jail since their initial arrest on November 5, 1957. See Exhibi "C". The sentence imposed is within the maximum prescribed by law for the crimes with which petitioners were charged and found guilty inasmuch as *Section 801.02, Florida Statutes*, provides that the crimes of incest, fondling (lewd and lascivious behavior) when said acts were committed with a person 14 years or under, shall be included under the provisions of *Chapter 801*, [fol. 18] *Florida Statutes*. See also *Buchanan* vs. *State*, Fla., 111 So. 2d 51. *Section 801.03, Florida Statutes*, provides that anyone convicted of an offense within the

meaning of *Chapter 801* may, in the discretion of the trial Judge, be sentenced to a term not to exceed 25 years in the State Prison. The trial court having adjudged the petitioners guilty of all crimes charged in the information filed against them and having sentenced them to only one sentence within the legal maximum provided by law for each of such crimes, has obviously already decided this issue in the petitioners' favor.

XV

Respondent denies all allegations of the petitioners which are not expressly admitted herein.

Wherefore, respondents, having made return to the writ of habeas corpus heretofore issued herein, respectfully moves the court that said writ be quashed and petitioners remanded to the custody of the respondents.

Respectfully submitted,

H. G. Cochran, Jr.
Director, Division of Corrections

[fol. 19]

Francis R. Bridges, Jr.
Chairman

Raymond B. Marsh
Joseph Y. Cheney
As and constituting the Florida Parole Commission

By:
Francis R. Bridges, Jr.
Chairman, Florida Parole Commission
Respondent

Richard W. Ervin
Attorney General

B. Clarke Nichols
Assistant Attorney General
Counsel for Respondents

Certificate of Service
(omitted in printing)

[fol. 20] EXHIBIT "B" TO RETURN

White Male

STATE OF FLORIDA
UNIFORM COMMITMENT TO CUSTODY
OF DIVISION OF CORRECTIONS
COURT OF RECORD

(Court)

ESCAMBIA County. September Term, 1958

Conviction for (Offense)—1st ct. Incest; 2nd ct. Fondling
Date of conviction—September 19, 1958
Date of sentence imposed—September 19, 1958
Term of sentence—six (6) months to twenty (20) years

58-614

STATE OF FLORIDA, PLAINTIFF

VS.

WILLARD CARNLEY, DEFENDANT

In the Name and By the Authority of the State of Florida, to the Sheriff of Said County and the Division of Corrections of Said State, Greeting:

The above named defendant having been duly charged with the above named offense in the above styled Court, and he having been duly convicted and adjudged guilty of and sentenced for said offense by said Court, as appears from the attached certified copies of

(Information)

judgment and sentence, which are hereby made parts hereof;

Now, therefore, this is to command you, the said Sheriff, to take and keep and, within a reasonable time after receiving this commitment, safely deliver the said defendant into the custody of the Division of Corrections of the State of Florida; and this is to command you, the said Division of Corrections, by and through your director,

superintendents, wardens, and other officials, to keep and safely imprison the said defendant for the term of said sentence in the institution in the state correctional system to which you, the said Division of Corrections, may cause the said defendant to be conveyed or thereafter transferred. And these presents shall be your authority for the same. Herein fail not.

WITNESS the Honorable Kirke M. Beall
Judge of said Court, as also Ernie Lee Magaha
Clerk, and the Seal thereof, this the 19th day
of September, 1958

/s/ Ernie Lee Magaha
Clerk of said Court

(To be used in committing defendants under indeterminate sentences as well as under sentences of imprisonment for definite periods.)

[fol. 21] EXHIBIT "F" TO RETURN

IN COURT OF RECORD
ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA

VS.

WILLARD CARNLEY

To All and Singular the Sheriffs and Constables of the State of Florida, Greeting:

These are to command you to take Willard Carnley if he be found in your County, and him safely keep, so that you have his body before the Judge of our Court of Record, at the Court House in Pensacola, in Escambia County, on the instante day of July term of the Court of Record 1958 to answer an information found and now pending in said Court of Record, for said County, for

1st ct: Incent
2nd ct: Fondling

and have then and there this writ with due return of your action endorsed thereon.

WITNESS: ERNIE LEE MAGAHA, Clerk, and the seal of said Court of Record at Pensacola, this 15th day of August 1958.

(SEAL)

ERNIE LEE MAGAHA
Clerk Court of Record

By: /s/ Leah Ware, D. C.

A True Copy:

ERNIE LEE MAGAHA, CLERK
COURT OF RECORD

By: /s/ Leah Ware
Deputy Clerk

No. 58-614 Sheriff 52,930 9-9-58

IN COURT OF RECORD
ESCAMBIA COUNTY, STATE OF FLORIDA

The Clerk of the Court will issue subpoenas for:

P. H. Bell and Officer Jernigan, c/o Sheriff's Office
Carol Jean Carnley, 3900 W. Morano St.
James Willard Carnley, 3900 W. Morano St.
Mrs. Mary C. Renfro, The Welfare Dept.,
Pensacola, Fla.

to be and appear before the Judge of our Court of Record, Escambia County, Florida, in the Court of Record Building, at Pensacola, on Friday, the 19th day of September A.D., 1958, at 9:00 o'clock A.M., to testify and the truth to speak in behalf of the STATE OF FLORIDA, in a certain matter before our said Court pending and undetermined, wherein the State of Florida is plaintiff and Willard Carnley and Pearl Carnley are the defendants.

/s/ John L. Reese
Solicitor, Court of Record

A True Copy:

ERNIE LEE MAGAHA, CLERK
COURT OF RECORD

By: /s/ Leah Ware
Deputy Clerk

[fol. 22] No. 58-614

IN COURT OF RECORD
ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA

vs.

WILLARD CARNLEY

CAPIAS
Bond fixed at $1500.00

ERNIE LEE MAGAHA
Clerk

By /s/ Leah Ware, D. C.

Received this Capias on the 15th day of Aug. A.D., 1958 and executed the same by placing one Willard Carnley, the within named prisoner, in the County Jail of Escambia County, Florida, on the day of 18th Aug. A.D. 1958.

/s/ Emmett Shelby
Sheriff

By /s/ [illegible]
Deputy Sheriff

[fol. 23] EXHIBIT "G" TO AFFIDAVIT

10-31-57 Fondling, Carnal interc. unmarried fe.

Docket No. 42563

IN COURT OF COUNTY JUDGE
ESCAMBIA COUNTY

STATE OF FLORIDA

VS.

WILLARD CARNLEY

c/o Percy Wilson, Portland, Florida

Bound over to await action of Grand Jury on
Rape & Incest Charges

No Bond

WITNESSES: [illegible]

LILLIAN L. DUFRESNE

AFFIDAVIT

Filed 1st Day of November A. D., 1957

HARVEY E. PAGE
County Judge

AFFIDAVIT

IN THE COUNTY JUDGE'S COURT
STATE OF FLORIDA

Before me, HARVEY E. PAGE, County Judge in and for said County, personally came Lillian L. Dufresne who being duly sworn, says that on the 31st day of October A. D. 1957 in the County aforesaid, one Willard Carnley, did then and there unlawfully have carnal intercourse

with one; Carol Jean Carnley, an unmarried female who was then and there at the time of such intercourse under the age of eighteen years, towit; 11 yr and of previous chaste character.

Willard Carnley, did handle, fondle and make an assault upon, Carol Jean Carnley, a female child under the age of 14 years in a lewd, lascivious and indecent manner without intent to commit rape on such child by then and there placing his hand and private sexual part upon and against the private sexual parts of said female child contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the State of Florida.

/s/ Lillian L. Dufresne
Asst. Juvenile Counselor

Sworn to and subscribed before me this 1st day of November A. D., 1957

/s/ Harvey E. Page
County Judge, Escambia County

A True Copy:

ERNIE LEE MAGAHA, CLERK
COURT OF RECORD

By: /s/ Leah Ware
Deputy Clerk

[fol. 24] EXHIBIT "1" TO RETURN

WARRANT

IN COUNTY JUDGE'S COURT
STATE OF FLORIDA
ESCAMBIA COUNTY

STATE OF FLORIDA

vs.

WILLARD CARNLEY

In the name of the State of Florida, to the Sheriff or any Constable of said County:

Whereas, Lillian L. Dufresne has this day made oath before me that on the 31st day of October A. D. 1957 in the County aforesaid, one Williard Carnley, did then and there unlawfully have carnal intercourse with one; Carol Jean Carnley, an unmarried female who was then and there at the time of such intercourse under the age of eighteen years, towit; 11 yr and of previous chaste character.

Willard Carnley, did handle, fondle and make an assault upon, Carol Jean Carnley, a female child under the age of 14 years in a lewd, lascivious and indecent manner without intent to commit rape on such child by then and there placing his hand and private sexual part upon and against the private sexual parts of said female child. contrary to the statute in such case made and provided, and against the peace and dignity of the State of Florida.

These are therefore, to command you to arrest instanter the said Williard Carnley and bring him before me to be dealt with according to law.

Given under my hand and seal, this 1st day of November A. D. 1957.

/s/ Harvey E. Page (SEAL)
County Judge, Escambia County

A True Copy:

ERNIE LEE MAGAHA, CLERK
COURT OF RECORD

By: /s/ Leah Ware
Deputy Clerk

WARRANT

IN COUNTY JUDGE'S COURT
STATE OF FLORIDA
ESCAMBIA COUNTY

STATE OF FLORIDA

vs.

PEARL CARNLEY

In the name of the State of Florida, to the Sheriff or any Constable of said County:

Whereas Lillian L. Dufresne has this day made oath before me that on the 31st day of October A. D. 1957 in the County aforesaid, one Pearl Carnley did maintain and assist Willard Carnley the principal or accessory before the fact and did give the said Willard Carnley aid, in the unlawful carnal intercourse with one Carol Jean Carnley age 11 years, and did aid the said Willard Carnley to handle, fondle and make an assault upon Carol Jean Carnley, a minor, age 11 years.
contrary to the statute in such case made and provided, and against the peace and dignity of the State of Florida.

These are therefore, to command you to arrest instanter the said Pearl Carnley and bring her before me to be dealt with according to law.

Given under my hand and seal, this 1st day of November A. D. 19

/s/ Harvey E. Page (SEAL)
County Judge, Escambia County

A True Copy:

ERNIE LEE MAGAHA, CLERK
COURT OF RECORD

By: /s/ Leah Ware
Deputy Clerk

[fol. 25] Docket No. 42563

IN COURT OF COUNTY JUDGE
ESCAMBIA COUNTY
STATE OF FLORIDA

STATE OF FLORIDA

VS.

WILLARD CARNEY w/m

c/o Percy Wilson, Portland, Florida

WARRANT

Filed 7 day of Nov. 1957

/s/ Harvey E. Page
County Judge

Filed day of 19

Clerk Criminal Court Record

Received the within warrant at Pensacola, Florida, on the 5th day of Nov. A. D. 1957 and executed the same in Escambia County, Florida, on the 5th day of Nov. A. D. 1957 by arresting the within named Willard Carnley and bring him into court.

/s/ Emmett Shelby
Sheriff

By /s/ P. G. Bell
Deputy Sheriff

Docket No. 42562

IN COURT OF COUNTY JUDGE
ESCAMBIA COUNTY
STATE OF FLORIDA

STATE OF FLORIDA

vs.

PEARL CARNLEY

c/o Percy Wilson, Portland, Florida

WARRANT

Filed 7 day of Nov. 1957

/s/ Harvey E. Page
County Judge

Filed day of 19

Clerk Criminal Court Record

Received the within warrant at Pensacola, Florida, on the 5th day of Nov. A. D. 1957 and executed the same in Escambia County, Florida, on the 5th day of Nov. A. D. 1957 by arresting the within named Pearl Carnley and bring him into court.

/s/ Emmett Shelby
Sheriff

By /s/ P. G. Bell
Deputy Sheriff

[fol. 26] EXHIBIT "J" TO RETURN

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA

In the Circuit Court of the First Judicial Circuit of the State of Florida in and for Escambia County

At the Spring Term thereof in the Year of Our Lord One Thousand, Nine Hundred and Fifty-eight

The Grand Jurors of the State of Florida, lawfully selected, impaneled and sworn, inquiring in and for the body of the County of Escambia upon their oaths as Grand Jurors, do present that on the 10th day of July in the year of our Lord, One Thousand, Nine Hundred and Fifty-seven at and in the County of Escambia, State of Florida

WILLARD CARNLEY AND PEARL CARNLEY who are within the degrees of consanguinity within which marriages are prohibited or declared by law to be incestuous or void, whereby Willard Carnley did commit fornication with his daughter, Carol Jean Carnley, who was within the degrees of consanguinity as prohibited by law, contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Florida.

SECOND COUNT:

And your informant aforesaid, prosecuting as aforesaid, upon his oath aforesaid, further indictment makes, that on the 10th day of July, 1958, at and in the County of Escambia, State of Florida, WILLARD CARNLEY AND PEARL CARNLEY did handle, fondle and make an assault upon a female child, to-wit: Carol Jean Carnley, under the age of fourteen (14) years, to-wit: thirteen (13) years of age, in a lewd, lascivious and indecent manner, without intent to commit rape upon said female child

Contrary to the Statutes in such cases made and provided and against the peace and dignity of the State of Florida.

/s/ [signature illegible]
State Attorney for the
First Judicial Circuit of the State of Florida.

A True Copy:

ERNIE LEE MAGAHA, CLERK
COURT OF RECORD

By: /s/ Leah Ware
Deputy Clerk

[fol. 27] No. .....

Bond set $1,000.00 each defendant

CIRCUIT COURT OF
ESCAMBIA COUNTY

THE STATE OF FLORIDA

vs.

WILLARD CARNLEY and PEARL CARNLEY

INDICTMENT FOR

1. Incest
2. Fondling

A TRUE BILL

/s/ Peter Kaston
Foreman

Presented in open Court by the Grand Jury and filed in the presence of the Grand Jury, this 8 day of August A.D. 1958

/s/ Langley Bell, Clerk
/s/ Ed Wicke

By /s/ J. A. Flowers, D. C.

WITNESSES FOR THE STATE

Carol Jean Carnley
James Willard Carnley

[fol. 28] EXHIBIT "K" TO RETURN

IN THE COURT OF RECORD IN AND FOR
ESCAMBIA COUNTY, STATE OF FLORIDA

STATE OF FLORIDA

vs.

WILLARD CARNLEY and PEARL CARNLEY, DEFENDANTS

This case came on to be tried before the Honorable Kirke M. Beall, one of the Judges of the above named Court, on the 19th day of September, A. D. 1958, and the following proceedings were had:

APPEARANCES

For the State:
Hon. William S. Cummins
Hon. Tom E. Lewis

For the Defendants:
None

COLLOQUY BETWEEN COURT AND DEFENDANTS

THE COURT: Mrs. Carnley, and Mr. Carnley, as the Court has advised you, you can either make an opening statement now to the jury as to what you intend to prove or you can reserve the right to make an opening statement until the conclusion of the State's case. Would you indicate to the Court which you would rather do. Mrs. Carnley, would you like to make an opening statement to the jury now or would you rather wait until the State has completed their case?

[fol. 29] MRS. PEARL CARNLEY: Well, this here statement, Your Honor, what that I intend to make, that is, that I am not aware of any indication like that of my daughter, and then, too, I can—

THE COURT: Do you wish to make the statement now or do you wish to reserve the right until the State has completed the case? Either of you can do as you like. In other words, one of you can make an opening statement now and the other one make it at the conclusion of

the evidence or both of you can wait until the conclusion of the State's evidence to make your opening statement or both of you can make your opening statement now.

MRS. PEARL CARNLEY: Well, I believe I will just wait and hear what the State has got to say and then I will tell my side of the story.

MR. WILLARD CARNLEY: Yes, sir, I will, too.

THE COURT: The Court will make an announcement that before this witness testifies the law requires the Court to clear the court room of spectators. You are all free to remain outside and will be called back after this witness testifies, if you would like to come back. The Court orders each of you who are not Court officers or parties to the action to go outside.

[fol. 30] CAROL JEAN CARNLEY, a witness in behalf of the State, who after being first duly sworn testified as follows:

DIRECT EXAMINATION BY MR. WILLIAM S. CUMMINS:

Q. Carol Jean, tell the Court and Jury your name, please.

A. Carol Jean Carnley.

Q. How old are you, Carol Jean?

A. Fourteen.

Q. How old were you on July the 10th of the past year, 1957?

A. I was thirteen.

Q. You were thirteen then?

A. Yes, sir.

Q. Carol Jean, is this your father and mother, are these your father and mother? (Indicating the defendants)

A. Yes, sir.

Q. That is, the defendants Willard Carnley and Pearl Carnley, they are your father and mother?

A. Yes, sir.

Q. Have you ever had intercourse with your father? Do you know what I mean by intercourse, sexual intercourse?

A. Yes, sir.

Q. Now, when was the first time that you had intercourse with him?

A. Chumuckla.

[fol. 31] Q. Chumuckla, Florida? That is near Jay, isn't it?

A. Yes, sir.

Q. How old were you then?

A. I was eleven years old.

Q. Do you know about what date you first had intercourse with him?

A. No, sir, I do not.

Q. Was it within the past two years?

A. Yes, sir.

Q. It was?

A. Yes, sir.

Q. Well, where were you all living in Chumuckla when you first had intercourse with him?

A. We was renting a house from Mr. Ed. I don't remember his last name.

Q. And what happened, exactly?

A. Well, Daddy was drinking that night, and I was a big girl then and I hadn't ever quit wetting on the bed yet, and Daddy told me to take off my pants so I wouldn't wet, and that night it all happened. He took me in the room next—you walk right in right straight across the hall to another room, and he had the gun and he threatened Mother.

Q. He threatened your mother?

A. Yes, sir.

[fol. 32] Q. What did he say to your mother, do you remember?

A. Well, he didn't want her to come in there or try to stop him. If she had tried, he would undoubtedly have shot her with the gun.

Q. Now, Carol Jean, did you have intercourse with him that night? Did his private sexual parts go into yours?

A. Well, he tried, but I guess I just wasn't ready for that kind of thing, and I kept hollering to him to quit. See, he tried.

Q. Now, later on did he penetrate?

A. Yes, he kept trying and eventually he did.

Q. Now, after you lived in Chumuckla where did you live after that?

A. We moved to Allentown.

Q. Alentown?

A. Yes, sir.

Q. How long were you in Allentown?

A. Well, it happened in Allentown about once or twice. I believe the first time it happened in Allentown Mother was gone. I don't know where she was gone to.

Q. Now, where did you move after you left Allentown?

A. To a little town. I don't recollect the name.

Q. Berrydale?

A. Yes, Berrydale.

[fol. 33] Q. And then where did you move after that?

A. To Jay.

Q. Back to Jay? Did you ever more over to Escambia County, Century?

A. Yes, sir, we moved from Jay to Century.

Q. How long have you been living in Century, or how long did you live in Century?

A. We moved there close to Christmas.

Q. That was in 1956?

A. Yes, I believe so.

Q. Now, after you moved to Century did your father have any intercourse with you there, any sexual intercourse.

A. Yes, sir.

Q. Now, that is Century, Florida, in Escambia County, Florida, isn't it?

A. Yes, sir.

Q. It is in Escambia County, Florida?

A. I think so.

Q. That is this county here, Century above Pensacola?

A. Yes, sir.

Q. All right, now, when you moved to Century, did your father have any intercourse with you there?

A. Yes, sir.

[fol. 34] Q. Now, about how often did he do it with you there?

A. Once or twice every week, but when my period would come on, I would tell him I couldn't, and then he wouldn't

do it, but about the time I got pregnant, well, I had not quite finished my period and he messed with me then and that is when I got pregnant.

Q. Now, when was this?

A. It was when Mother had went to make arrangements for my little sister's casket.

Q. You had a little sister die?

A. Yes.

Q. What was her name?

A. Anne Elizabeth.

Q. Was it Christmas in 1956 that they moved to Century, Florida, about Christmas, in December of 1956?

A. It was either '56 or '55. I don't really remember.

Q. Were you pregnant when you moved to Century?

A. No, sir.

Q. When was the baby born?

A. April the 1st, 1958.

Q. April, 1958?

A. Yes.

Q. Do you know about when you got pregnant?

A. On June the 29th.

[fol. 35] Q. What year was that, Carol Jean?

A. That was in '56, I believe.

Q. '57?

A. It was a little while before we were sent to the home.

Q. Was that in the year '57 or '56?

A. That was '57, July the 18th.

Q. In other words, you got pregnant the summer of 1957?

A. Yes, sir.

Q. Were you living in Century, Florida, at that time?

A. Yes, sir. Miss Holmes, I had not started, and she took me to the doctor. First she took me to Dr. Hixon, and he thought that I was just upset over being took to the home, and then she took me back a week later to another doctor, and I was three months.

Q. Now, while you were living up in Century did you ever consent to your father having intercourse with you?

A. No, sir.

Q. What did you say to him?

A. I said, "Daddy, don't."

Q. And what did he say?

A. He said, "Hush," that he would do it anyhow, even if I didn't want him to. I never consented

Q. Did he ever threaten you?

A. Yes, sir.

[fol. 36] Q. How did he threaten you?

A. Well, he told me he would kill me. I can remember the first time—the first time Mother knew about it, see, he would take me and tell Mother—we had a wood stove—that me and him was going to get wood, and he would take me off down in the woods and have intercourse with me and he would say if I told Mother that he would kill me.

Q. Did your mother even know that you were having intercourse with your father?

A. No, not while, you know, when I was very young. She knew it the first time, but, see, he would take me off somewhere.

Q. Didn't you all ever have it inside of the house?

A. Yes, but that was when I got maybe a couple of years more older.

Q. Now, you say that your mother had gone to make arrangements for your sister's casket, and that was the last time you had intercourse with your father?

A. Yes, sir.

Q. Do you remember about when your sister died.

A. It was in July because I believe it was a couple of weeks after she had been buried. Well, the neighbors had us sent to the home.

Q. Let's go back now. You say in July, about the first part of July?

[fol. 37] A. Yes, sir.

Q. Did you have any intercourse with you father during June of that year, 1957?

A. Yes.

Q. About how many times?

A. Maybe once or twice or maybe three times.

Q. Did your mother ever know anything about it?

A. Yes, sir.

Q. How do you know that she knew about it?

A. Well, she would say that she was tired and to "Go get Carol."

Q. You have heard her say that?

A. Yes, sir.

Q. What would your father do then?

A. He would either bring me in the bed with him or either go back into my bedroom.

Q. What did your mother tell you?

A. She said, "Oh, go on."

Q. What did she mean by that, do you know?

A. No, I don't.

Q. You have a pretty good idea?

A. Yes, sir, I guess she just didn't want Daddy to mess with her.

[fol. 38] Q. And on those occasions your mother told you to go on in to him?

A. Yes, sir.

Q. Was that in Century, Florida?

A. Yes, sir.

Q. Did you have relations with him after you got pregnant?

A. No, sir, I don't believe so. I believe we was sent to the home.

Q. When you moved to Century, did you live there continuously until you got pregnant?

A. Yes, sir.

Q. What is your age right now, Carol Jean?

A. Fourteen.

Q. When were you fourteen?

A. February the 28th.

Q. 1958? This past year?

A. Yes, sir.

Q. And when you became pregnant, you were thirteen years old, is that not correct?

A. Yes, sir.

Q. Now, did your father have relations with you from the time you got pregnant right on down to the time you were eleven years old?

[fol. 39] A. Yes, sir.

Q. Did you ever have relations with anybody else?

A. No, sir.

Q. Did you ever date or go out during this time?
A. No, sir.
Q. You never did?
A. No, sir.
Q. And how many times since you have lived in Escambia County up in Century did your mother actually tell you to go in there, or did you hear her say that she was tired, and "Go get Carol"? Just an estimate about how many times.
A. Well, four or five times.
Q. Four or five times? That is between December and June or July?
A. Yes, sir.
Q. And every time did your father have intercourse with you?
A. Yes, sir.
Q. And she knew about it?
A. Yes, sir.
Q. She didn't try to stop it?
A. She didn't, no, sir.
Q. Where is your father, Carol Jean? Is he in court today?
[fol. 40] A. Yes, sir.
Q. Would you point him out, please.
A. Right there. (Indicating defendant Willard Carnley)
Q. What is his name?
A. Willard Hubert Carnley.
Q. Would you point out your mother, please.
A. There. (Indicating defendant Pearl Carnley)
Q. What is her name?
A. Pearl Rhoda Carnley.
Q. Now, when did you have your baby?
A. April the 1st, 1958.
Q. Was it a boy or a girl?
A. It was a girl.
Q. And whre is the baby now?
A. It was adopted out.
Q. Where did you have the baby?
A. It was in a hospital in Tampa but I was in a Salvation Army Home during all the time I was pregnant.

Q. Did you during these times try to scream or resist your father?

A. No, I never tried to scream but I have argued with him.

Q. You have argued with him? What did you say and what did he say, now?

[fol. 41] A. Well, I don't remember.

Q. You don't remember, but you did try to argue with him?

A. Yes, sir.

Q. Why did you submit to him?

A. Well, he has threatened by brother and mother and even me, so I was scared of him, especially when he was drunk.

Q. How old were you when your father first got penetration, Carol Jean? I mean, he actually got inside of you. You said that he tried for a while and finally got inside of you.

A. I don't know. I must have been about twelve years old.

Q. You were about twelve? He tried for a year?

A. Yes, sir.

Q. Was he staying home during this time or was he working?

A. Well, he was home most of the time.

Q. He was not working?

A. No, sir. Maybe he would pick up a little job here and there.

Q. How were you all supported then?

A. By the welfare. We was getting a school check of $81.00.

Q. That was before you got pregnant?

A. Yes, sir.

Q. What kind of work did he do up in Century, if he did any at all, do you remember?

[fol. 42] A. He painted for Mr. Hudson. He painted some houses.

Q. What did he say when he found out you were pregnant?

A. I was in the home, and Mother, she had come down to try to get us out of the home when Mrs. Holmes had done took me to Judge Bruno, I think, and told—

Q. Well, don't say what she told him unless your mother was there.

A. No. She found out that I was pregnant when she had went down there to try to get us out of the home.

Q. And what did she say about it, if she said anything?

A. I was down with the Asiatic flu, and she come to see me, and Mrs. Holmes let her up in my room for about five minutes and she said, "Carol Jean, I know you are pregnant." I said, "Yes, Mother. You know who is the father of it, too."

Q. And what did she say?

A. She said, "Yes."

Q. Did you talk to your father about being pregnant?

A. No, sir.

Q. You didn't? Did he come to see you?

A. No, sir.

Q. He never did come to see you?

A. He come to see me maybe once or twice before he found out that I was even pregnant. After I was pregnant, he didn't come to see me.

[fol. 43] Q. What grade are you in school?

A. Seventh grade.

Q. Carol Jean, let me ask you this. What sort of threats did he make to your brother? You said that he threatened your mother and yourself.

A. That he would kill him, and he has shot at him and he has throwed knives.

Q. How about your mother? Has he thrown knives at her?

A. He had poked knives to her, maybe her stomach, and threatened her and hit her, and he would beat my mother a lots when he was drunk.

Q. But he did make some threats to you?

A. Yes, sir.

Q. Now, this penetration, when he actually got into you, did he get into you with his hands or with his private parts? Did he put his hand inside of you?

A. No, sir.

Q. It was his private parts inside of you?

A. Yes, sir.

Q. Did he ever use any sort of contraceptive, or do you know what a contraceptive is, a rubber or any sort of protection?

A. Sometimes.

Q. He did?

[fol. 44] A. Yes, sir, once he did.

Q. Where was this?

A. I can't remember, but we was—I know the name of the person's house we was renting.

Q. Who were they?

A. His last name was Mr. Skipper, I think.

Q. Was that here in Escambia County?

A. I don't—it has been so long, I don't know.

MR. CUMMINS: No further questions.

THE COURT: Mr. Carnley, did you wish to cross examine the witness? Do you wish to interrogate the witness concerning what she has testified to?

MR. WILLARD CARNLEY: Yes, sir.

CROSS EXAMINATION BY MR. WILLARD CARNLEY:

Q. Carol Jean, you say your mother, she went and made arrangements to get the casket for your sister?

A. Yes.

Q. You are right sure now that she did?

A. I am sure.

Q. Well, I will tell the Court, my wife was out at Mr. Joe Gayfer's house—

THE COURT: Wait a minute, sir, you are testifying. [fol. 45] You will have a chance to testify when the State rests. Any questions you wish to ask your daughter, you are welcome to do it.

CROSS EXAMINATION BY MRS. PEARL CARNLEY:

Q. Carol Jean, don't you recall after you got age of maturity that Mother tried to tell you right from wrong and always teach you right from wrong?

A. Yes, you have taught me right from wrong.

THEREUPON the witness was excused.

J. W. CARNLEY, a witness in behalf of the State, who after being first duly sworn testified as follows:

DIRECT EXAMINATION BY MR. CUMMINS:

Q. J. W., tell the Court and Jury your name, please.
A. My name is J. W. Carnley.
Q. And how old are you, son?
A. Fifteen.
Q. You are fifteen. What day were you fifteen?
A. December the 23rd.
Q. And in June and July of '57 you were fourteen years old, is that not correct?
A. Yes, sir.
Q. Do you go to school?
[fol. 46] A. Yes, sir.
Q. What grade are you in?
A. Tenth.
Q. Tenth where?
A. Escambia High.
Q. Escambia High School?
A. Yes, sir.
Q. James, is Pearl Carnley your mother?
A. Yes.
Q. And is Willard Carnley your father?
A. Yes, sir.
Q. Carol Jean Carnley is your sister?
A. Yes, sir.
Q. How many other brothers and sisters do you have?
A. Four, four living. I have two sisters and three brothers living.
Q. And do you have a dead sister?
A. Yes.
Q. What is her name?
A. Anne Elizabeth. I think that is it.
Q. When did she die?
A. She died July of '57. I forget the date she died.
Q. James, have you ever seen your father have sexual [fol.47] relations with your sister Carol Jean?
A. Yes, I have saw it.
Q. Where?

A. I saw him once at Allentown. I walked in the bedroom where they was at. He said, "Boy, you had better get out of here or I will get hold of you."

Q. Was this at night?

A. Yes.

Q. And where were you sleeping at the time?

A. I was sleeping in the room right down from them.

Q. Who was your sister sleeping with generally then, another sister or your father and mother?

A. No, sir, my sister generally slept with a little boy about, I guess he was about two or three years old, something like that.

Q. And how long have you lived in Escambia County, Florida?

A. I don't know, about a year and a half, I guess.

Q. Do you remember what date you moved to this county?

A. No, sir, I don't.

A. Where were you living when your sister died?

A. Century.

Q. That is in Escambia County, Florida?

A. Yes, sir.

Q. Do you remember, does that sort of tie in? Could [fol. 48] you now remember about when you moved to Escambia County?

A. I believe it was sometime in December, I think.

Q. December the year before, in other words, 1956?

A. I believe it was, the early part of December.

Q. Now, have you seen your father have intercourse with your sister since December of '56?

A. No, sir.

Q. Have you heard anything?

A. Yes, sir.

Q. What have you heard exactly, with reference—

A. I have heard him tell—I have heard my mother tell him that she was tired, or something like that, and she would say, "Get Carol," you know, and they would get her in there, and Carol would put up an argument about it.

Q. How many times did you see this happen, son, or hear it happen?

A. From December until July, I guess two or three times, I guess.

Q. You heard it two or three times?

A. Yes.

Q. Well, did it always seem to happen that way, your mother would say she was tired?

A. Yes.

[fol. 49] Q. What would your father say, to begin with? Would he say he was going to have sexual relations? How did he put it exactly?

A. Well, he would say, "What about," you know, "let's do that," you know, and she would say, "Well, I am tired. Get Carol."

Q. And would he go get Carol?

A. Yes, he would either go in the room with her or they would get her out.

Q. Who would get her out?

A. Mother or Daddy either one, they would say, "You had better get on out here."

Q. Did you ever say anything to your father about this?

A. I told him he was going to get in trouble about it.

Q. Did you tell him that?

A. Yes, sir.

Q. What did he say to you?

A. He said, "Shut up, I am going to get hold of you," something like that.

Q. Did he ever threaten you?

A. Yes, sir, he has threatened me. He has shot at me and he has throwed knives and chairs at me.

Q. He has shot at you?

A. Yes.

Q. With what?

[fol. 50] A. A rifle.

Q. Twenty-two?

A. Yes, sir.

Q. Now, he has thrown knives at you, too?

A. Yes, sir.

Q. Since you have been living up in Century?

A. Yes, in Century.

Q. About how many times?

A. Well, I don't remember.

Q. Did you ever see your father and mother fighting?

A. Yes.

Q. Did he ever throw a knife at her?

A. Well, I don't think he has ever throwed any at her. He has drawed them and things like that and said he would use it on her, you know.

Q. Now, was your father home most of the time since you moved to Century until June or July?

A. Yes, sir, he was home most of the time.

Q. Was he working?

A. No, sir.

Q. How were you all living then?

A. Well, they was, Daddy and Mother, they drew a welfare aid check or something, to send us to school with. That was what it was supposed to be for.

[fol. 51] Q. Did your sister run around with any other boys?

A. No, sir.

Q. Did she date?

A. No, sir.

Q. Was she a good girl?

A. Yes, sir.

Q. She never went out with any other boys at all then?

A. No, sir.

Q. How old is your sister now?

A. She is fourteen now.

Q. Do you know when she was fourteen?

A. Yes.

Q. When?

A. February 28th.

Q. February 28th of this year, 1958?

A. Yes, sir.

Q. Do you know if your sister ever became pregnant? Do you know if she had a baby?

A. Yes, when the welfare sent her to Tampa, she was.

Q. Did you ever talk to your mother and father about her being pregnant?

A. No.

[fol. 52] Q Did they talk to you about it or say anything to you?

A. No, sir, not as I recall.

Q. Now, when did you leave home? When did you leave Century?

A. To come up here in Pensacola and live?

Q. Yes.

A. About July the 18th, I believe.

Q. Why did you leave?

A. Because we were not being taken care of right or something like that, the best I remember.

Q. Who took custody of you?

A. I don't know, I guess it was the welfare did, and they sent me and my brother to Youth Harbor until they found us a home to stay at, and they sent the rest of the children to 12th Avenue.

Q. Where are you staying now?

A. Mrs. Spivey, 3900 West Moreno Street.

Q. Where is your sister staying?

A. Same place.

Q. Same place? Is Carol Jean the one you are talking about now?

A. Yes.

Q. Did your parents ever come to see you after you were taken into custody by the welfare office?

A. Yes, sir, they came to see me at Youth Harbor, I think, about two or three times.

[fol. 53] Q. Was there ever any talk about your sister being pregnant at this time?

A. No, sir.

Q. Nobody ever said anything to you about it?

A. Nobody ever said anything to me.

Q. James, let's get back to what happened up in Century. You said that after your mother said, "Go get Carol"—

A. Yes, sir.

Q. Did you hear what would transpire after that?

A. Well, they would, after they got Carol into the room, she wouldn't want to submit to him, but he would force his way on her.

Q. What would they say?

A. She would say, "You had better quit or I will tell on you," or "Call the police," or something like that, and he would say, "You had better not or I will—", just threatening her.

Q. Now, did he always take her into his room or did he sometimes go into her room?

A. He sometimes went in her room.

Q. But you could hear all of this?

A. Yes, sir.

Q. Now, how close were you to these two rooms?

A. Well, I was right beside Carol's room, and his wall connected to my wall and I could hear through the walls. [fol. 54] Q. How do you mean his wall connected to your wall?

A. Well, it was kind of partitioned off. Here is one room here and one room here and one kind of in the back. (Indicating)

Q. They were adjoining rooms?

A. Yes, sir, and there was no door. I could hear right on there.

Q. There weren't any doors?

A. No, not on the inside of the house, there were no doors.

MR. CUMMINS: No further questions.

THE COURT: Mr. Carnley, do you wish to cross examine the witness?

MR. CARNLEY: No, sir.

THE COURT: Mrs. Carnley?

MRS. CARNLEY: Yes, sir, I sure do.

CROSS EXAMINATION BY MRS. CARNLEY:

Q. J. W., at this period of time, did you realize whenever we was up there at Century of your Dad's sickness from the time we moved up there until it was springtime, and after he was sick from his stomach that he taken a serious attack down by reason of his employment?

A. Yes, I realize he said he was sick. He was supposed to be sick. I know that.

THEREUPON the witness was excused.

[fol. 55] MR. CUMMINS: THE STATE RESTS, YOUR HONOR.

THE COURT: Mr. Carnley, the State has rested their case. You reserved the right to make an opening statement to the jury as to what you intend to prove in your

own defense. You can exercise that right now and make a statement to the Jury.

THEREUPON the defendant Willard Carnley made his opening statement to the Jury.

THE COURT: Mrs. Carnley, do you wish to make an opening statement?

THEREUPON the defendant Pearl Carnley made her opening statement to the Jury.

THE COURT: The two of you have made your opening statements to the Jury. Now, before you take the witness stand, if you wish to testify, it is the duty of the Court to advise you that under the Constitution you can't be required to testify against yourselves. You can testify in your own defense, if you like, but anything you testify to can be held against you. Mr. Carnley, would you like to take the witness stand?

MR. CARNLEY: I would love to say one more thing.

THE COURT: Wait a minute, sir. Do you wish to take the witness stand and testify?

MR. CARNLEY: Yes, sir.

[fol. 56] WILLARD CARNLEY, a witness in his own behalf, who after being first duly sworn testified as follows:

THE COURT: Face the Jury, sir, and testify. You are free to testify now, Mr. Carnley.

MR. CARNLEY: Well, what I had now, the children, they was talking about that I didn't come to see them. I come to see them as many times as I could while they was out there. I went out there, and Glenn, he was sick and was crying, and I was hurt over them taking my children and I got mad there at that woman and kind of popped off a little bit, so she called Judge Bruno, and Judge Bruno told her to not let me come out there to see the children no more. Well, then I taken and told my wife I couldn't live in a country where I couldn't see my children. I went to work at a milk dairy and every other week I would give ten dollars to a fellow to bring my wife over here to see the young ones. She could see them, but they wouldn't let me see them. Well, I was only making twenty-five dollars a week. Of course, we was getting all

out milk. I would just take milk from the milk dairy and everything, and this here about the girl, I ain't never handled my daughter in no disorderly respect, and they played hookey a lots from school. When they was going to school, we would send them and they wouldn't go. They didn't have to ride the bus with the other young ones because they went to one school and they went to the other and they played hookey. We sent them to school and we thought they had went and they hadn't. And [fol. 57] during the time that my wife says she seen her last period, well, there was a family of folks lived down the road from there. His wife was sick and they had a little baby, too, and my wife let the daughter go down there every morning early and cook for them and wait on them for about two weeks or maybe approximately a little longer. When she come back home, she would grab a magazine or something or other and read until about dark and she was getting ready then to go and watch television, that's all that she did, television, and we let her go. Sometimes she would go one way and sometimes she would go the other way to watch television and sometimes she would come back at nine o'clock or eleven or eleven-thirty, and I told my wife I believed we were letting her go a little too much, and she said, "No, they are getting old enough to have a little bit of privilege," and so I didn't think nothing else about it, and as far as me knowing anything about it, I didn't know until my wife come back and told me about it. We was working, trying to get straightened out, trying to get a lawyer to get my children back, and that is all I have to say.

CROSS EXAMINATION BY MR. CUMMINS:

Q. Have you ever been convicted of a crime, Mr. Carnley?

A. Yes, sir.

Q. How many times?

A. One time.

Q. One time? How was your house in Century ar- [fol. 58] ranged? You mentioned the houses were this way and that way.

A. Well, you come in the front door here, me and my wife, out bed was in the front room, and there was another room here. (Indicating) The door went through here, and then there was another room back in here. The door went back in there. That was the only outlet from in there on and around through our room.

Q. There weren't any doors, were there?

A. Sir?

Q. It was a sort of shotgun house?

A. Yes, sir, it was a square house but the rooms cut off—our bedroom was here and the kitchen was right back of it, and the rooms run kind of just about like this here, and you go out our room into her room and her rom into the boys' room, and me and my wife, we had our bed in the front room, and the kitchen then was just beyond there.

Q. There weren't any doors in the house, were there?

A. No, sir, no doors.

Q. Now, did you ever hear that your daughter was pregnant?

A. Sir?

Q. Did you ever hear that your daughter was pregnant?

A. Not until my wife come back and told me.

Q. Had you been to see your daughter before then?

A. Yes, sir, I went up until they stopped me.

[fol. 59] Q. That was after you found out she was pregnant?

A. No, sir.

Q. You saw her after you found out she was pregnant?

A. No, sir, I had never seen her until we went to Pensacola, because they wouldn't let me.

Q. Who made arrangements for this shroud for your baby who died?

A. I did.

Q. You did? Your wife never did make one arrangement at all?

A. No, sir. You can call up Mr. Waters over there. I was the one that came got the casket, and I got it on credit and I have been messed up so I haven't paid for it yet.

Q. In other words, when you testified at the preliminary

hearing, you were asked, "In other words, your wife never had anything to do with those arrangements," and you answered, "No, sir, my wife wasn't even down there"?

A. No, sir, she wasn't even down there.

Q. Did you ever threaten your son with a knife?

A. No, sir.

Q. Did you ever threaten him with a gun?

A. No, sir.

Q. Do you own a gun?

A. No, sir.

[fol. 60] Q. You never have had one in your house?

A. Yes, sir, I used to have one a long time ago but I got down sick and was operated on and I had to sell it.

Q. I am talking about here, when you were up at Century. You never have had one in your house?

A. No, sir. I don't even tote a pocket knife, not since I cut Walker Yarborough and got sent off for it.

Q. You are not the father then of your granddaughter?

A. No, sir.

Q. You used a contraceptive then, is that right?

A. Sir?

Q. You used a contraceptive, a rubber?

A. No, sir, I ain't never messed with her.

Q. When did your daughter Anne Elizabeth die?

A. I don't just remember when she died, but we were living over there on Mr. Alonzo Ellis' place.

Q. About when was it? Were you living in Century then?

A. Yes, sir, the baby, we was living up there at Century in Mr. Hudson's house.

Q. Was it in 1957, last year?

A. Yes, sir.

Q. In the summer of last year?

A. Yes, sir.

[fol. 61] Q. Weren't you living on welfare support then?

A. Sir?

Q. Were you living on welfare then?

A. Yes, sir, and I was picking up painting to do, little jobs that I could get to do. Mr. Hudson, he was building some houses, and every time he got one ready to paint, well, I painted it for him.

Q. Did you say that your son always had money?

A. Yes, sir.

Q. And you say you didn't know how he got the money?

A. Well, I know how he got some, because I whipped him and made him carry it back to him.

Q. Let me ask you this. Did you not testify this way at the preliminary hearing: "Did they have a hearing on this case? No, sir," and further down, this is on page 28, "They had money. They sold peanuts. I helped them sell peanuts and I give them money. They had money to spend all the time." In other words, they made their money selling peanuts, didn't they?

A. Well, they had some but he had more than that to spend when he went to selling peanuts, because J. W. hardly ever did sell any peanuts.

Q. But he did sell peanuts?

A. Once in a while.

Q. Well, which is right?

[fol. 62] A. The two other boys is the ones that sold the peanuts every day, me and them.

Q. You and them?

A. Yes, sir.

Q. You made money selling peanuts, too?

A. Yes, sir.

Q. Is J. W. your son?

A. Yes, sir.

Q. Is Carol Jean your daughter?

A. Yes, sir.

Q. How old is Carol Jean?

A. She is fourteen.

Q. How old was she in June of 1957?

A. She was thirteen.

Q. How many other children do you have?

A. I have got six.

MR. CUMMINS: That is all.

THE COURT: Mrs. Carnley, do you wish to cross examine the witness?

MRS. CARNLEY: Yes, sir, I sure do. In one statement that he made he just kind of forgot a little bit.

THE COURT: Well, don't start testifying. We will give you an opportunity. Do you wish to cross examine Mr. Carnley?

[fol. 63] MRS. CARNLEY: No, sir, I don't wish to cross examine him.

THEREUPON the witness was excused.

THE COURT: Mrs. Carnley, the Court advises you that under our Constitution you can't be required to testify and that anything you testify to can be held against you. Do you wish to testify?

MRS. CARNLEY: Yes, sir, I surely do.

PEARL CARNLEY, a witness in her own behalf, who after being first duly sworn testified as follows:

THE COURT: You may proceed, Mrs. Carnley.

MRS. CARNLEY: Well, this incident what that we are talking of, well, during the time that they are speaking of our Anne Elizabeth, just as my husband said, I was at my cousin's at the time that he went to make the arrangements and all that I done was got my cousin to carry us back home and also bring the baby. And during these times that my daughter was talking of her Daddy's mistreatment toward her, that is certainly not so, because I was around the house quite a bit myself and also I never seen her Daddy in no respects disrespectfully in no way, shape or form because for one thing, if there was any correcting or chastising to do, it was always left [fol. 64] up to me because he always said the mothers knew better how to correct the daughters than the fathers, so that was mostly left up to me. And as far as my husband ever threatening the kids, he never threatened the kids with nothing at all and also me and him, we used to argue, but as far as him threatening me, he never did, but you know arguments always come in all married families. Arguments always comes in some way, but so far as us arguing with the children, we never did argue with the children. We tried to be firm with them, but it seemed like the more firm we got, these two older kids, they couldn't stand the pressure, so they would, every time that their Daddy would get after them or something or other about some of their doings, well, that oldest boy would say, "Well, Daddy, you will sure regret it. I will get even with you one way or the other," and also the girl would get mad and flirtified and she would almost have the same opinion. Of course, she wouldn't say so

but she would have almost the same opinion about things. And so far as the first of her pregnancy was whenever she come down here, I came down here to make arrangements to try to get the kids and I came to see the girl several times, well, once or twice or three times more, and she never even mentioned a thing to me about her being pregnant up to the last time, and that was after I seen Judge Bruno, and I said, "Honey, I sure hate it for you," and that was all that was ever mentioned. The other times she never did mention anything about the pregnancy during the whole time that I would go to see her. She never did mention it, and that is all I have [fol. 65] got to say.

CROSS EXAMINATION BY MR. CUMMINS:

Q. Mrs. Carnley, the night that your husband made the arrangements for the shroud and casket for your daughter, the one that died, Anne Elizabeth, now, did he make all those arrangements?

A. Yes, sir, he surely did.

Q. And you didn't go in at all and help him?

A. No, sir, I didn't. I was at my cousin's.

Q. You didn't stay there at all?

A. No, sir.

Q. Do you remember testifying before Judge Page on this same thing?

A. Yes, sir, I sure do.

Q. You knew you were under oath then, ma'am?

A. Yes, sir, I knew I was under oath.

Q. Do you remember these questions and your answers to them: "Question, Well, who did you make the arrangements with in regard to the casket and so forth. Was it here in Pensacola?"

A: Yes, sir, it was here in Pensacola. It was Waters and Hibbert.

Q. "And you made the arrangements yourself"? Your answer, "Well, yes, my husband and I both made the arrangements, he and I both did, but, see, I came first and he came later." In other words, you did come in [fol. 66] first, didn't you?

A. Now, listen, what that I want to explain to you, I came to my cousin's first and then I come on down to

the hospital and I found out, they told me about my baby's death. So they called Waters & Hibbert and they came over there and got the baby's body, and I answered the questions that they asked me. Well, I left from there and went on back out there to my cousin's. I stayed out there until my cousin come in, and after he come in, well, I got him to carry the oldest boy and myself downtown to meet my husband to go to the undertaker and get the baby and bring it on back out to the house, and he done the dress buying and everything at Sears and Roebuck. So that is where I say that he and I both were, we both made some of the arrangements, you see, but as far as the business part, well, he done more of that than I did. The only thing I done was go to the hospital, and they made arrangements for Waters & Hibbert to take the baby from there on to the undertaker, and I answered what questions that they asked me then.

Q. Well, that is the same questions that I am asking you right now, and I ask you what your answers are. "Well, who did you make the arrangements with in regard to the casket and so forth? Was it here in Pensacola," and you said, "Yes, Waters and Hibbert," and "Did you make the arrangements yourself?" "Yes, my husband and I both make the arrangements, he and I both did. I came first, and he came later." Now, isn't it a fact that when Anne Elizabeth died that your husband [fol. 67] sent you and J. W. to hitch hike in to make the arrangements?

A. Well, no, he didn't particularly send us to hitch hike.

Q. But you all did go in there that way?

A. Yes, sir. Listen, what I want to tell you, he didn't send us to hitch hike. We tried to make arrangements to catch a ride down there and we done everything we could and we couldn't get nobody to carry us, so we caught a ride as far as my cousin's and then we went straight from my cousin's on to the hospital.

Q. Did you ever have any fights with your husband?

A. Well, sir, no, sir, not to amount to nothing we didn't.

Q. Did he ever throw a knife at you?

A. No, sir. That is something he ain't done in the whole seventeen, nearly eighteen years, is throw a knife.

Q. Did he ever threaten your son J. W.?

A. No, sir, he never did threaten him.

Q. Did he ever have a gun in his house at Century?

A. No, sir, not when we moved to Century, surely he never.

Q. He never did threaten him with a gun?

A. No, sir, not when we lived in Century. No, sir, he didn't even have one.

Q. Didn't he say, "If you don't go on, boy, I will get a rifle and shoot you," up in Century?

A. No, sir, not up in Century, no, sir.

[fol. 68] Q. Do you remember over at the preliminary hearing when you were asked the following question: "Was this shooting that took place that J. W. testified to, was that over Carol Anne or was it over something different," and your answer, "No, it wasn't in particular over Carol Anne. He just got a little influenced off of that stuff, and to tell you the truth, he got mad at all of us, and J. W. somehow or other, he had a few remarks to make his Daddy some way or another. I don't know just how it all come up, and he had a few remarks to make to his Daddy, and his Daddy was real mad then and he said, "If you don't go on, boy," said "I will get my rifle and I will shoot you. Well, J. W., somehow or another kept on arguing with his Daddy, so his Daddy rose up and he taken and he got the rifle, and the little boy thought he was going to kill him, and he wouldn't have done it for nothing. He was just doing that just to be doing it because he was influenced at the time." You remember that testimony?

A. Yes, sir, but now let me explain a little question to you. He didn't do—what we are talking of, he didn't do that while we lived at Century.

Q. Well, you denied having the gun. You said he never had the gun and he never has threatened anybody, and I am saying that one of these statements you are making under oath, you are under oath now and you were under oath then, and one of them is incorrect, and I would like to find out which is the truth. Were you telling the truth

[fol. 69] then or are you telling the truth now? That is what it amounts to.

A. Well, it just amounts that he never did threaten the boy like the boy testified he did.

Q. But he did say, "If you don't go on, boy, I will get my rifle and I will shoot you," didn't he?

A. No, sir.

Q. He didn't say that? That is what you testified, isn't it?

A. No, sir, that is a misunderstanding there, no.

Q. Can you read?

A. Yes, sir, I can read.

Q. All right, is that your name? (Indicating)

A. Yes, sir, it is, Pearl Carnley.

Q. "A witness in her own behalf, who after being first duly sworn testified as follows;" Now, you just read from right there down to the bottom and see if you said it or not. Do you deny making that statement now, ma'am?

A. Well, now, what that I want to get you straightened out on that—

MR. CUMMINS: Your Honor, I don't want to press her, but I wish she would answer "Yes" or "No."

THE COURT: Mrs. Carnley, just answer the question "Yes" or "No."

Q. Did you make that statement over there?

A. Yes, sir.

MR. CUMMINS: That is all. We have no further questions.

THE COURT: Mr. Carnley, do you have any questions [fol. 70] to propound to your wife?

MR. CARNLEY: No.

THE COURT: Do you have any further testimony you would like to give, Mrs. Carnley?

MRS. CARNLEY: No, sir, not that I know of.

THEREUPON the witness was excused.

THE COURT: Mr. Carnley, do you have any further evidence you would like to present in your defense?

MR. CARNLEY: No, sir, not that I know of. I didn't have no gun up there at Century.

THE COURT: If you want to testify, sir, come up and take the witness stand.

WILLARD CARNLEY, a witness in his own behalf, was recalled to the witness stand and further testified as follows:

MR. CARNLEY: Well, I am talking about I didn't have no gun up there at Century. What she got mixed up on that is that I had a gun, used to, when I lived over there at Alonzo Ellis'. It is all true enough, I had a .22 rifle, but that was the time they was wanting me to shoot some birds out there, and I didn't have but a few cartridges and I wanted to go squirrel hunting and they kept on and made me mad, and I said, "Well, I will get out there and shoot the birds," but I said "When I shoot one, they will all fly away." He said, "Well, we will get down yonder around that pond and scare them and they will come back here and light in these trees," and I said, "All right." So I got down there and shot and killed three or four birds and directly one lit on a little old [fol. 71] little old limb, and I shot and hit the tree and glanced off and hit another one pretty close to him, and he claimed that I was shooting at him, and Christ in heaven knows I wasn't, because you stick something up there with a .22 rifle, and I ain't going to miss it. They can try me on that, but as far as me ever shooting at my young ones, I did not, and the time I was talking about the baby's death, my wife, they called up. The baby wasn't dead yet; it was in a dying condition. I told my wife, "I will try to get you a way down there," and I tried to get the money, and they come on walking, and I couldn't get no money, and they hadn't got to town before I had done got another call that the baby was dead, and the daughter come down there to the store with me to get some groceries down there, and when she got back, she told me the baby was done dead. Well, I pulled out and caught me a ride on downtown. The wife got to the hospital and answered the questions and she went out back to her cousin's. Well, I come there to the undertaking parlor to find out about it. So I made the arrangements for the casket and told him I would have to pay him as I could and I got the shroud on credit and I told them I would pay them for that, and then I called up my wife and told her that I had done had the

casket and a shroud and everything, to get her cousin to come down and pick it up and carry it home where I couldn't have that ambulance fee, because they wanted the money for that then, and I didn't have it. That is all I can say.

CROSS EXAMINATION BY MR. CUMMINS:

Q. I just want to ask you, you said you did accidentally shoot at your boy?

[fol. 72] A. No, sir, that was over in Santa Rosa County.

Q. No, sir, you stated that you were shooting at birds and he thought you were shooting at him, is that right?

A. The bullet glanced and hit a tree next to him, and he said I must have been shooting at him. That wasn't at Century. I didn't have a gun up there.

Q. Did you hear your wife say you made this statement before the judge, "If you don't go on, boy, I will get my rifle and shoot you"?

A. No, sir, I don't remember.

Q. In other words, your wife was wrong? You didn't make that kind of statement?

A. Sir?

Q. You didn't make a statement like that?

A. No, sir, I didn't.

Q. Didn't you send J. W. and your wife into town hitch hiking from Century?

A. Yes, sir. I couldn't get nobody to bring them. And they called up and my baby was done dead, and I got out and hitch hiked me a ride to town and made arrangements for the casket and got the shroud and found out where my wife was then, and she was back out at her cousin's, and I called her up and got Mr. Hillman, one of her cousins, to come in from work, to get him to come down to pick up the casket and the baby and all of us and carry us back home.

Q. In other words, they hitched hiked to town. Was Carol Jean there when they hitch hiked to town?

A. Yes, sir.

[fol. 73] Q. You were there with her?

A. Yes, sir.

Q. What time of day or night was it?

A. It was about ten o'clock one morning. Me and Hubert and William and Glenn and Dianne was all there at the house, a family of folks that lived right in front of the house, just room for a road to go through, and another family, they lived this side of us, and another along this side here, just like these houses here in town.

Q. In other words, you didn't go down and make arrangements yourself like you first testified to? Both you and your wife went down?

A. Yes, sir, I made the arrangements for the casket myself. I signed for it. I am the one that asked him about getting it on time.

Q. And this wouldn't be right, either what you testified at the preliminary hearing? "In other words, your wife has never had anything to do with those arrangements?" and your answer was, "No, sir, my wife wasn't even down there." That is wrong?

A. Not putting the baby away, she didn't. What I got mixed up in was getting the casket.

MR. CUMMINS: I have no further questions.

THE COURT: Mrs. Carnley, do you wish to cross examine the witness?

MRS. CARNLEY: No, sir.

THEREUPON the witness was excused.

THE COURT: Mr. Carnley, do you have anything [fol. 74] further to present in your own defense?

MR. CARNLEY: No, sir, I haven't.

THE COURT: How about you, Mrs. Carnley?

MRS. CARNLEY: No sir, not that I know of, owing to what that I just testified to, well, that is just exactly the way the thing went.

THE COURT: Let the record show both defendants have rested their case.

J. W. CARNLEY, a witness in behalf of the State, was recalled to the witness stand and further testified as follows:

DIRECT EXAMINATION BY MR. CUMMINS:

Q. You are the same James Carnley who testified here earlier, aren't you?

A. Yes, sir.

Q. James, let me ask you something. Did your father ever take a shot at you?

A. Yes, sir.

Q. With what?

A. A rifle.

Q. .22?

A. Yes, sir.

Q. Where did it take place?

A. Chumuckla.

Q. What exactly happened there, son?

A. Well, I think him and Mama was quarrelling over [fol. 75] something, and I said something about it or something, you know, and he said, "Boy, I will learn you," or something like that, and "Boy, I will kill you for running from me."

Q. You started running?

A. Yes, sir, I ran across the woods, and he shot at me.

Q. He wasn't shooting at birds?

A. No, sir.

MR. CUMMINS. No further questions.

THE COURT: Mr. Carnley, do you wish to examine the witness? Let me advise you this, Mr. Carnley. Your cross examination is limited to what he has just testified about. In other words, you can't go into any other evidence other than the shooting incident.

MR. CARNLEY: No, sir.

THE COURT: Mrs. Carnley, do you wish to cross examine your son?

MRS. CARNLEY: No, sir.

THEREUPON the witness was excused.

MR. CUMMINS: THE STATE RESTS:

THE COURT: Mr. and Mrs. Carnley, in this case each of you have testified and have not presented any evidence other than your own testimony as witnesses. This entitles you to both the opening and closing arguments. That is, each of you have the opportunity to get up and argue your case, and then the State argues its case, and

then you have the opportunity to get up and argue the rebuttal to what the State argues about. You may proceed with the argument.

[fol. 76] THEREUPON argument was presented before the Jury by the State and by the defendants.

COURT'S CHARGE

THE COURT: Gentlemen of the Jury, the defendants, Willard Carnley and Pearl Carnley, are on trial before you under an information which charges Willard Carnley on the 10th day of July, 1957, under the first count, with the offense of incest. Under the second count the defendant Willard Carnley is charged with the offense of fondling. Under the third count of the information the defendant Pearl Carnley is charged with being an accessory before the fact to incest, and also the defendant Pearl Carnley under the fourth count is charged with being an accessory before the fact to the crime of fondling.

Before the defendants, or either of them, may be found guilty of any offense under this information, it is first necessary that the evidence establish that the offense, if any, was committed and that it was committed in Escambia County, Florida, and that it was committed sometime within two years prior to the date of the filing of the information, the information having been filed on August the 11th, 1958.

To the information each of the defendants has entered his and her plea that he and she are not guilty. The effect of the pleas of the defendants is to cast upon the State the burden of proving by the evidence and beyond a reasonable doubt the guilt of the defendants, or each of them, and each defendant is presumed to be innocent until his or her guilt is established, respectively, by the evidence and to the exclusion of every reasonable doubt.

A reasonable doubt is one of conformable to reason, a doubt which a reasonable man would entertain, and it [fol. 77] does not mean a mere possible doubt, because everything relating to human affairs and depending on moral evidence is open to some possible doubt. It is that state of the case which, after consideration of all the

evidence, leave the minds of the jurors in that condition that they cannot say that they feel an abiding conviction to a moral certainty of the truth of the charge. A reasonable doubt is not a mere shadowy, flimsy doubt amounting to the bare possibility that the defendants may be innocent, but it is a doubt which a reasonable and intelligent man would have after a full and fair comparison and consideration of all the evidence. If, after a full and fair comparison and consideration of all the evidence, the jury as intelligent and reasonable men have an abiding conviction to a moral certainty that the charge against either defendant is true, then they have a reasonable doubt, and it would be their duty to render a verdict of conviction of the respective defendant or defendants, as the case might be, as charged in the information.

The first count in the information charges that the defendant Willard Carnley on July 10th, 1957, being then and there the father of Carol Jean Carnley, and within the degree of consanguinity within which marriages are declared by law to be incestuous and void and then and there knowing the said Carol Jean Carnley to be his daughter, did then and there unlawfully, feloniously and incestuously have sexual intercourse with the said Carol Jean Carnley against the form of the statute in such case made and provided and against the peace and dignity of the State of Florida. Under the law of Florida a man may not marry anyone to whom he is related by lineal consanguinity nor his sisters nor his aunt nor his niece, and it is a crime against the law of the state for any person so related within the degree of consanguinity with-
[fol. 78] in which such marriages are prohibited to commit adultry or fornication with any such person or to have sexual relations with any such person. By consanguinity is meant blood relationship. That is to say, it is the connection or relation of persons descended from the stock or common ancestor, as distinguished from affinity or relationship by marriage. Lineal consanguinity is that relationship which exists between persons of whom one is descended in a direct line from the other, as between the son and the father or the daughter and the father or the granddaughter and the grandfather. If you

find from the evidence in this case beyond a reasonable doubt that the defendant Willard Carnley did at divers times within two years prior to the filing of the information in this case have carnal intercourse with Carol Jean Carnley and that the defendant was the father of the said Carol Jean Carnley as alleged in the information, then you should find the defendant guilty as charged in the information.

The Court charges you that one separate and distinct act of sexual intercourse between father and daughter would constitute the crime of incest as charged in the information, provided the evidence establishes the same beyond a reasonable doubt.

Under the second count of the information the defendant Willard Carnley is charged with on the 10th day of July, 1957, at and in Escambia County, Flordia, did handle, fondle and make an assault upon Carol Jean Carnley, a female child then under the age of fourteen years in a lewd, lascivious and indecent manner without intent to commit rape upon said child by then and there placing his hands and private sexual parts upon and against the private sexual parts of said female child, against the form of the statute in such case made and [fol. 79] provided and against the peace and dignity of the State of Florida. The words "lewd and lascivious or indecent manner" connote the idea of lustful, or for the purpose of inciting lust, so if you find from the evidence in this case, beyond a reasonable doubt, that this man Willard Carnley did handle, fondle or assault Carol Jean Carnley in the manner and by the means charged in the information and that he did so in a lewd, lascivious and indecent manner, within the definition of those items as the Court has given them to you, it would be your duty to find the defendant guilty of fondling under the second count of the information. Of course, in that respect, with respect to the fondling count, the second count of the information, it also is necessary that the State establish its evidence beyond a reasonable doubt and that the evidence establish that the offense, if any, was committed and it was committed in Escambia County, Florida, sometime within two years prior to the date of the filing of the information, August the 11th, 1958.

The third count of the information charges the defendant Pearl Carnley with being an accessory before the fact to incest. That is to say, the third count charges that Willard Carnley on the 10th of July, 1957, at and in Escambia County, Florida, being then and there the father of Carol Jean Carnley, and within the degree of consanguinity within which marriages are declared by law to be incestuous and void, and then and there knowing that said Carol Jean Carnley to be his daughter, did then and there unlawfully, feloniously and incestuously have sexual intercourse with the said Carol Jean Carnley, and Pearl Carnley, late of the County of Escambia aforesaid, before the committing of the felony aforesaid, to wit, on July 10th, 1957, with force and arms and in Escambia [fol. 80] County aforesaid, did unlawfully and feloniously counsel, hire and other wise procure the said Willard Carnley to do and commit the same felony in the manner and form aforesaid against the form of the statute in such case made and provided and against the peace and dignity of the State of Florida.

Under the law of Florida an accessory before the fact is one who, though absent at the time of the commission of a felony, did nevertheless procure, counsel, command or abet another in the commission of such a felony. In the event you find that the defendant Pearl Carnley, beyond a reasonable doubt, sometime within two years prior to the date of the filing of the information and in Escambia County, Florida, did procure, counsel, command or abet Willard Carnley in the commission of the crime of incest and that you find that the defendant Willard Carnley did commit the crime of incest, beyond a reasonable doubt as the Court has previously charged you, then you should find the defendant Pearl Carnley guilty of being an accessory before the fact to incest as charged under the third count of the information.

The fourth count of the information charges that the defendant Pearl Carnley was an accessory before the fact to the offense of fondling. The fourth count, in effect, says this, that Willard Carnley on the 10th of July, 1957, at and in Escambia County, Florida, did handle, fondle and make an assault upon Carol Jean Carnley, a female child under the age of fourteen years, in a lewd, lascivious

and indecent manner without intent to commit rape upon said child by then and there placing his hands and private sexual parts against the private sexual parts of said female child; and Pearl Carnley, late of Escambia County [fol. 81] aforesaid, before the committing of the felony aforesaid, to wit, on July 10th, 1957, with force and arms and at and in the County of Escambia aforesaid, did unlawfully and feloniously counsel, hire and otherwise procure the said Willard Carnley to do and commit the said felony in the manner and form aforesaid.

Under the law of Florida it is unlawful for a person to procure, counsel, command or abet another to commit a felony, and should you find that the defendant Pearl Carnley in Escambia County, Florida, sometime within two years prior to the date of the filing of the information, and beyond a reasonable doubt, did procure, counsel, command or abet Willard Carnley to commit the felony charged in the second count, to wit, fondling, you should find then in that event the defendant Pearl Carnley guilty of the offense of accessory before the fact to fondling as charged under the fourth count of the information.

In the evidence in this case there has been evidence tending to prove that the defendant committed other acts similar to those constituting the offense charged against him and against her, also, now in the information, and it is admitted in evidence solely for that purpose, the purpose being of tending to illustrate or explain such acts against him in this case which the evidence may show that he committed, or of tending to show with what intent, motive or knowledge if any, the defendant may have committed such acts charged against him in this case which the evidence may show that he committed, or of tending to corroborate any testimony that may have been given in this case tending to prove that the defendant committed—the defendant or defendants committed the offense or offenses now charged against him or her, [fol. 82] and the evidence relating to such other acts may be considered by the Jury for such purposes only and not for the purpose of finding whether or not the defendant or defendants is or are guilty of such other acts than those constituting the offenses with which they are presently charged.

You are the sole judges of the evidence and of the weight of the evidence and of the credit to be given the witnesses who have testified before you. In weighing the evidence you should reconcile the evidence or testimony if you can. If you cannot reconcile it, then it within your province to say which witness or witnesses you deem worthy of credit and which you deem worthy of no credit or belief at all, and you should base your verdict upon what you find to be the testimony of the credible witnesses who have testified before you. In weighing the evidence and in determining the credibility of the witnesses, you should take into consideration the interest, if any, that the witness has in the outcome of the case, and this includes the defendants who themselves took the stand as witnesses, the relationship, if any, that the witness has to any party who is interested in the outcome of the case, the apparent fairness or want of fairness of the witness while testifying. In weighing the credibility of a witness you must also take into consideration the apparent fairness or want of fairness of the witness in tetifying,t he manner and demeanor of the witness upon the stand while testifying, the means of observation that the witness had as to the facts about which he or she testifies, the probability or lack of probability of the truth of the facts about which the witness testified, and you will also take into consideration all of the other evidence [fol. 83] in the case which you find to be credible evidence and which tends either to corroborate or contradict that particular witness's testimony. In weighing the evidence and in determining the credibility of a witness, you have and should use and apply the same common sense and general knowledge of men and affairs that you use in your everyday lives. In connection with the credit that you should give to the witnesses who have testified, the Court charges you that should you find that a witness or witnesses have wilfully testified falsely as to any material fact, then under such circumstances you would be justified in disregarding all of the testimony of that witness or witnesses, if, in your judgment, you do not believe their testimony to be true.

The Court further charges you that the fact that the defendants were arrested and that an information has been filed against them in this case should not be considered by you as evidence against either of them.

Now, upon a question propounded by the State to the defendant Willard Carnley he answered in the affirmative or he admitted that he had been convicted of a crime. The Court charges you that you are not to consider that fact as evidence of the defendant's guilt in this case and that the sole purpose of such testimony is to guide you in weighing the credit to be given to testimony offered by the defendant Willard Carnley, and for that purpose only.

The Court instructs you that should you find the defendants, Pearl Carnley and Willard Carnley, guilty as charged in the information, that is, under the first count Willard Carnley is charged with the offense of incest and under the second count he is also charged with the offense of fondling. Under the third count Pearl Carnley is [fol. 84] charged with being an accessory before the fact to incest, and under the fourth count with being an accessory before the fact to fondling. Should you find the defendants guilty as charged under all four counts, the form of your verdict would be, "We, the Jury, find the defendants, Pearl Carnley and Willard Carnley, guilty under the counts of the information as charged. So say we all." In the event you find both of the defendants not guilty under all four counts of the information as charged, the form of your verdict would be, "We, the Jury, find the defendants, Pearl Carnley and Willard Carnley, not guilty under the counts of the information as charged. So say we all." There are other combinations of verdicts which you may render. The Court has prepared form verdicts in which you may render appropriate verdicts by deleting the words "not guilty" or the word "guilty." In the event that you find the defendant Willard Carnley guilty under the first count, that is, the charge of incest, and not guilty under the second count, under the charge of fondling, the form of your verdict would be, "We, the Jury, find the defendant Willard Carnley guilty under the first count and not guilty under the second count as charged." In the event you find that the defendant Wil-

lard Carnley is not guilty under the first count and guilty under the second count, that portion of your verdict would be, "We, the Jury, find the defendant Willard Carnley not guilty under the first county and guilty under the second count as charged in the information," and in that same verdict you can find the defendant Pearl Carnley either guilty or not guilty under either count of the information, that is, either the third or the fourth count of the information, or you can find her guilty under [fol. 85] one and not guilty under the other by deleting either the word "guilty" or the words "not guilty" as it applies to the respective counts.

You will retire to the Jury Room, select one of your number as foreman, and return to the Court with a verdict executed by your foreman. You may take the case.

[fol. 86] REPORTER'S CERTIFICATE
(omitted in printing)

[fol. 87] IN THE
FLORIDA SUPREME COURT
TALLAHASSEE, FLORIDA

[Title omitted]

RETURN TO RESPONDENT'S REPLY BRIEF ON WRIT OF HABEAS CORPUS

The petitioners, Willard Carnley and Pearl Carnley, hereby make reply to the respondent's brief on writ of habeas corpus, saying:

I

The trial record as furnished these petitioners clearly reflects that they were plunged into the middle of their trial without any chance of preparing a defense and without counsel.

II

The record is silent as to the petitioner's claim that they requested defense counsel and protested their inability to defend themselves, also their request for lie detector tests; in fact the first page of the record would appear to have purposely omitted these salient facts and abuse of discretion.

III

Further, the record shows that two proficient prosecutors were arrayed against these indigent and uneducated defendants.

[fol. 88] IV

Uncontroverted factual allegations of a habeas corpus must be accepted as true so long as they are not repudiated by the records of the trial Court and it cannot be said as a matter of law that they are insufficient to raise a jurisdictional or Constitutional question:

United States v. Shaugnessy, 206 F. 2d, 392:
Chessman v. Teets, 221 F. 2d, 276.

V

The respondent's contention that defendants "were able to defend themselves" dehors the record and poses a question of doubt as to the respondent's fidelity to the law as portrayed in the authorities cited in the original petition.

VI

Petitioners request the Court to closely scan the observations in:

Webb v. Baird, 6 Ind. 13, 18:
Betts v. Brady, 316, 218. 455, 462;

Viz: It is not to be thought of in a civilized community—for a moment—that any citized put in jeopardy of life or liberty, should be debarred of counsel because he was to poor to employ such aid; no Court could be respected or respect itself, to sit and hear such a trial.

VII

The entire record reflects the ignorance and total inability of the petitioners to examine witnesses or in any way defend themselves and elaborately portrays the issues involved in the petition.

VIII

The record offers no material evidence of guilt and reflects that no offer was made to find fact with a polygraph test or a blood test of the child to determine parenthood alleged to be the petitioner.

[fol. 89]

IX

WHEREFORE, The respondent failing to show cause why petitioners should be illegally imprisoned and fails to show true cause of detention, and failing in his argument to adhere to the issues involved or respond to the questions raised upon which habeas corpus was granted, petitioners pray that this Honorable Court decree that a permanent writ of habeas corpus accrue and issue an

order that they be released frin their illegal imprisonment.

Before me, an officer empowered to administer oaths, appeared WILLARD CARNLEY, a petitioner herein, who deposes and says that the facts related in this Petition are true and correct.

/s/ Willard Carnley
WILLARD CARNLEY, Petitioner

• • • •

[fol. 90]

IN THE SUPREME COURT OF FLORIDA

JULY TERM, A. D. 1960

Case No. 30,473

WILLARD CARNLEY, PEARL CARNLEY, PETITIONERS

vs.

H. G. COCHRAN, JR., Director, Division of Corrections, RESPONDENT

OPINION FILED SEPTEMBER 23, 1960

A case of original jurisdiction—Habeas Corpus

Willard Carnley and Pearl Carnley, in Proper Person, for Petitioners

Richard W. Ervin, Attorney General and B. Clarke Nichols, for Respondent

TERRELL, J.

On petition of Willard Carnley and Pearl Carnley, writ of habeas corpus was on June 16, 1960, issued from this court as to each petitioner and return thereto was filed by respondent.

The return shows that respondent holds Willard Carnley and Pearl Carnley pursuant to a commitment from the Court of Record for Escambia County, Florida, dated September 19, 1958. Said commitments are predicated on judgments and sentences by the Court of Record of Escambia County entered September 19, 1958. The said judgments and sentences resulted from Willard Carnley and Pearl Carnley having been tried and convicted by a jury on an information charging Willard Carnley with the crime of incest and fondling and Pearl Carnley as [fol. 91] being accessory before the fact to incest and accessory before the fact to fondling.

It is shown that petitioners waived a jury trial but the trial court refused to accept waiver of the jury which

he had a right to do under the law of this state. Jones vs. State, 155 Fla. 558, 20 So.2d 901 (1945). All the evidence at the trial was accordingly submitted to and passed on by the jury. Respondent denies that petitioners were totally unable to defend themselves. He denies that petitioners requested counsel to defend them. He denies that the trial court peremptorily ordered petitioners to sit down when they attempted to interrogate the witnesses against them.

Respondent affirmatively alleges that petitioners actively participated in the conduct of the trial with both interrogating the witnesses against them, both making opening statements to the jury and both making closing arguments to the jury. It is further shown that petitioners were carefully instructed by the trial court with regard to the rights guaranteed to them under the state and federal Constitutions and with respect to procedure governing the trial. A certified transcript of the testimony taken at the trial is attached to and made a part of the record in this proceeding. It proves each and every of the proceedings enumerated herein.

Petitioners contend that the crime of incest and the crime of fondling constitute a single offense. It will be observed, however, that in this case defendants were found guilty of all counts charged in the information, that they were sentenced to imprisonment in the state penitentiary for a term of six months to twenty years, and by the terms of said sentence given credit for the time they spent in the Escambia County jail since their initial arrest on November 5, 1957. The sentence imposed was within the maximum prescribed by law for the crimes with which petitioners were charged and found guilty. Inasmuch as § 801.02, Florida Statutes, provides that the crime of incest, fondling [lewd and lascivious behaviour] when said acts are committed with a person 14 years old [fol. 92] or under, shall be included under the provisions of Chapter 801, Florida Statutes, certainly no harm accrued to petitioners. Buchanan vs. State, Fla. App. 1959, 111 So.2d 51.

Section 801.03, Florida Statutes, provides that anyone convicted of an offense within the meaning of Chapter

801 may, in the discretion of the trial judge, be sentenced to a term not to exceed 25 years in the state prison. The trial court having adjudged petitioners guilty of all crimes charged in the information filed against them and having sentenced them to only one sentence within the legal maximum provided by law for each of such crimes would seem to have decided this issue in favor of petitioners.

The return to the writ of habeas corpus shows that respondent no longer has custody of Pearl Carnley, inasmuch as she has been placed on parole and is accordingly subject to the supervision of the Florida Parole Commission, but it is shown that notwithstanding Pearl Carnley is now a parolee and as such is not physically confined in prison in the custody of respondent, she is so restrained of her liberty that she can maintain habeas corpus in an effort to secure her discharge from supervision of the Florida Parole Commission. Sellers vs. Bridges, 153 Fla. 586, 15 So.2d 293 (1943). For this reason the Florida Parole Commission joins in this return in so far as it pertains to the petitioner Pearl Carnley.

The law of this state does not require the court to appoint counsel to represent indigent defendants except in cases where they are charged with a capital offense. Section 909.21, Florida Statutes. If the record shows that defendant did not have counsel or fails to show whether he did or did not have counsel, it will be presumed that defendant waived the benefit of counsel and elected to present his own defense, as he has the right to do under Section 11, Declaration of Rights, Florida Constitution.

The purpose of the writ of habeas corpus is to bring petitioner before the court in order that the legality of his detention may be inquired into. The evidence and [fol. 93] the record before us show conclusively that petitioners were illiterate but illiteracy does not always mean that the illiterate lacked intelligence about many of the commonplace things of life. I have known men who had to sign their name by cross mark but those same men could go to the bank and push that cross mark through

the cashier's window and get all the money on it they asked for without any other endorsement. The banker knew they were intelligent men of good moral character, respected their obligation and would meet it. There is no showing here that petitioners suffered in the slightest from lack of intelligence. It is the general practice in this state when trying one charged with felony to inquire of him when he is arraigned if he has or desires counsel. If he answers in the negative and expressed a desire to have counsel, the court will generally appoint one to represent him.

An examination of the evidence and the record in this proceeding shows that the trial judge instructed the jury and the petitioners thoroughly with reference to their constitutional rights; the evidence was ample to establish the charges against them and there is not the least showing that they were prejudiced in any respect at the trial. To grant a new trial would amount to nothing more than thrashing over old straw.

The writ is discharged and petitioners are remanded. THOMAS, C. J., HOBSON, ROBERTS and DREW, JJ., concur

[fol. 94] Clerk's Certificate to foregoing transcript omitted in printing

[fol. 95] SUPREME COURT OF THE UNITED STATES

No. 641 Misc., October Term, 1960

WILLARD CARNLEY, PETITIONER

vs.

H. G. COCHRAN, JR., Director of the Division of Corrections

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTIORARI—June 19, 1961

ON CONSIDERATION of the motion for leave to file a petition for writ of habeas corpus herein,

IT IS ORDERED by this Court that the said motion be, and the same is hereby, denied.

Treating the papers submitted as a petition for writ of certiorari, certiorari to the Supreme Court of the State of Florida is granted. The motion for leave to proceed in forma pauperis is granted and the case is transferred to the appellate docket as No. 1045.

June 19, 1961

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